divided equally between their two children. After the husband's death the wife conveyed all the property to one of the children. The other child brought an action in equity to establish a trust in her favor. *Held,* that she had no enforceable interest. *Brown v. Kausche* (1917, Wash.) 167 Pac. 1075.

See COMMENTS, p. 389.

TRUSTS—UNINCORPORATED ASSOCIATIONS—DISPOSITION OF PROPERTY ON DISSOLUTION.—Funds were held in trust for a constantly changing group of beneficiaries. These funds were contributed by the beneficiaries in accordance with certain rules, and were to be used to perform certain services for the contributors for the time being. The need for the service came to an end. *Held,* that the funds remaining should be divided among the contributors "ascertained at the date when the purpose of the fund came to an end, in proportion to their contributions." *In re Customs & Excise Officers' Fund* [1917] 2 Ch. 18.

The English law of trusts provides a flexible scheme by means of which voluntary unincorporated associations may obtain many of the advantages which incorporation would confer. See 3 Maitland, *Collected Papers,* 321. Trusts of this kind usually have a changing group of beneficiaries and are thus frequently confused with charitable trusts, from which they differ in the fact that there is always at any moment a group of definite beneficiaries. See *Old South Society v. Crocker* (1875) 119 Mass. 1, 23. When the affairs of an unincorporated association whose property is held in trust are to be wound up, it is not always clear just who is entitled to the property. The guiding principle is undoubted, and is well stated in the principal case: "the right . . . in these cases is founded on contract," *i. e.,* upon the agreement of the parties. The chief difficulty is to ascertain the fair meaning of that agreement. When that is done, apparently inconsistent decisions prove not to be so in fact. For example, in *Braithwaite v. Attorney-General* [1909] 1 Ch. 510—a decision which at first may be thought to be inconsistent with the principal case—the court found that, upon the true construction of the agreements involved, all the contributors to the fund had received all they had bargained for. That being so, the surplus remaining went to the Crown as *bona vacantia.* A similar result was reached on the same reasoning in *Cunnack v. Edwards* [1896] 2 Ch. 679. On the other hand, the court in another case held that on the true construction of the agreement the fund remaining on dissolution should be divided among those who were members of the association at the time of the passing of the resolution for dissolution. *In re Printers' etc. Society* [1899] 2 Ch. 184. *Cf. Coe v. Washington Mills* (1889) 149 Mass. 543, 21 N. E. 966. The decision in the principal case is reached by following the same guiding principle, ascertaining the fair meaning of the agreements of the various parties as found in the rules of the association.

WILLS—MISTAKE—EFFECT OF TESTATOR'S ERRONEOUS BELIEF OF SON'S DEATH.—In a will contest the only son of a testator offered evidence that the will was made under the mistaken belief that he was dead. *Held,* that the will was not open to attack on this ground. *Bowerman v. Burris* (1917, Tenn.) 197 S. W. 490.

Mistakes of a testator with respect to his will may be classified as intrinsic or extrinsic. Intrinsic mistakes relate to the nature or contents of the instrument. Extrinsic mistakes relate to collateral facts in consequence of which the terms of the will may have been drawn differently than they would have been if the testator had not entertained the mistake. Mistakes of the former class which concern the nature of the instrument render the whole will void for lack of *animus testandi. Swett v. Boardman* (1804) 1 Mass. 258; *In re Meyer's Estate* [1908] P. 353; *Nelson v. McDonald* (1891, N. Y.) 61 Hun. 406, 16 N. Y.

Supp. 273. If the intrinsic mistake consists in the insertion of words without the testator's knowledge such words may be stricken out and the rest of the will admitted to probate. *Morrell v. Morrell* (1882) L. R. 7 P. D. 68. But words omitted by mistake cannot be added by a court of probate. *Goods of Schott* [1901] P. 190. On the other hand, extrinsic mistakes do not affect the validity of the will or any part of it. *In re Tousey's Will* (1901, N. Y. Surr. Ct.) 34 Misc. 363, 69 N. Y. Supp. 846 (mistake as to death of cousin); *Howell v. Troutman* (1860) 53 N. C. 276 (mistake as to testator's fatherhood of beneficiary); *Kidney's Will* (1895) 33 N. B. 9 (mistake as to legitimacy of child named as legatee). In order to make the fact of extrinsic mistake material, not only the mistake but also the disposition which the testator would have made had he not entertained the mistake must appear from the will. *Dicta* in *Gifford v. Dyer* (1852) 2 R. I. 99, and *Dunham v. Averill* (1877) 45 Conn. 61. The correctness on principle of this view is strengthened by analogous cases which apply the doctrine of dependent relative revocation when the mistake appears on the face of the revoking instrument. *Campbell v. French* (1797) 3 Ves. Jun. 321. In some states by express statute, a child erroneously assumed to be dead is allowed to share in the estate. See *In re Garraud* (1868) 35 Cal. 336. More usually statutes protect pretermitted heirs unless their disinheritance was intentional. *Whitby v. Motz* (1914) 125 Minn. 40, 145 N. W. 623. The effect of showing a mistaken belief as to death in such a case would clearly be to allow the child to share in the estate. The principal case is interesting as an additional authority upon a point on which the cases are not numerous.

WORKMEN'S COMPENSATION ACT—BASIS OF COMPENSATION—GRATUITIES.—In addition to his weekly wage as railway porter, the claimant received "tips" averaging 12 shillings a week. The custom of "tipping" was sanctioned by the employer. *Held,* that such gratuities were part of the "earnings" on which the amount of compensation should be based. *Helps v. Great Western Railway Co.* (1917, C. A.) 117 L. T. 229.

The compensation to be paid an injured employee under workmen's compensation acts depends, according to the great majority of the statutes, on his recompense under the contract of hiring. The expression used in the Acts is either "earnings" or "wages." Usually a legislative definition of the term used is contained in the Act. But, despite such attempt at definition, the solution of the problem whether gratuities are to be considered requires the interpretation by the court of the terms used, except in New Jersey where the Act expressly excludes gratuities. In England, the phrase "average earnings in the employment" had previously been held, under certain conditions, to include money received as "tips" from one other than the employer. *Penn. v. Spiers & Pond Ltd.* (C. A.) [1908] 1 K. B. 766, 98 L. T. 541. This holding was reaffirmed in the principal case. In the only American case found on the point, the term "wages" was similarly construed to include "tips" of a taxicab driver. *Sloat v. Rochester Taxicab Co.* (1917) 177 N. Y. App. Div. 57, 163 N. Y. Supp. 904. The court in that case declared that other provisions of the Act indicated that the legislature saw no broad distinction between the two phrases. In view of the economic considerations behind the enactment of the legislation a liberal interpretation is justified to effectuate their purpose. See *New York C. R. R. Co. v. White* (1916) 243 U. S. 188, 37 Sup. Ct. 247; *Powers v. Hotel Bond Co.* (1915) 89 Conn. 143, 146, 93 Atl. 245, 247. The decisions as to "tips" are believed sound.